

ARTHUR L. BUSTAMANTE,
a/k/a KING ARTHUR III,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

UNITED STATES OF AMERICA,)
)
 Respondent.)

Movant Arthur L. Bustamante filed this action under 28 U.S.C. § 2255, seeking to vacate his judgment of conviction and alleging that he received ineffective assistance of counsel. The government has filed a motion to produce affidavit, asking me to order Bustamante's former trial counsel, Michael Skrien, to prepare an affidavit responding to Bustamante's allegations. The government states that it understands Bustamante does not wish to waive his attorney-client privilege, and therefore Mr. Skrien will not prepare the affidavit, absent court order.

In his motion for relief under 28 U.S.C. § 2255, Bustamante has made numerous allegations of ineffective assistance of counsel. These allegations include claims that counsel failed to investigate and subpoena potential witnesses


and exhibits, that counsel met with him only once before trial and then tried to cajole him into pleading guilty, that counsel refused to conduct cross-examination according to Bustamante's directions, and that counsel gave bad advice about motions and about whether Bustamante should testify. If Bustamante pursues these allegations, he will be deemed to have waived the protections of the attorney-client privilege. Movant cannot claim his counsel was ineffective and then rely on the privilege to prevent the government from attempting to refute that claim.

Bustamante needs to inform me whether he wishes to persist in the claims of ineffective assistance of counsel. If he does, he will have waived his attorney-client privilege, and his trial counsel will be required to provide information so that the government can respond to his allegations.

Accordingly,

IT IS HEREBY ORDERED that no later than April 1, 2010, movant shall respond in writing to the government's motion to produce affidavit, and shall state whether he will withdraw his claims of ineffective assistance of counsel. If he does not withdraw the allegations of ineffective assistance, I will order counsel to provide the requested information and affidavit.

IT IS FURTHER ORDERED that the time for the government to file its response to the order to show cause is extended, and the government's deadline for filing a response is vacated and will be reset after I rule on the motion to produce affidavit.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 5th day of March, 2010.